

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Extended Study Session

October 8, 2001
6:00 p.m.

Council Conference Room
Bellevue, Washington

PRESENT: Mayor Mosher, Deputy Mayor Marshall, Councilmembers Creighton, Davidson, Degginger, Lee, and Noble

ABSENT: None.

1. Executive Session

The meeting was called to order at 6:06 p.m. by Mayor Mosher, who presided. There was no executive session.

2. Oral Communications

Mayor Mosher noted that speakers may not address the Council regarding any quasi-judicial matter except to comment on procedural issues.

- (a) Richard Brackett described a wireless communications facility under construction next door to his home on a residential parcel owned by Puget Sound Energy. He asked the City to place a stop work order and notice of violation on the project and to deny all pending applications. Mr. Brackett said the Bellevue Land Use Code states that wireless communications facilities are not permitted to be located on any undeveloped site in a residential land use district. He described a lack of response to his phone calls and letters to various City staff. He spoke with Carol Helland on August 29 and 30, who told him a stop work order would be issued on the project. Mr. Brackett submitted materials to Council providing a history of the project and his interaction with City staff.
- (b) A representative of the Bellevue Chamber Chorus expressed support for the proposed cultural arts center on the Ashwood site and noted the Chorus' need for office, rehearsal, and performance space.
- (c) Eric Shields, VoiceStream Wireless, discussed concerns about the placement of DSL equipment on residential properties. He asked Council to direct City staff to work with providers of wireless and other new technologies to enhance access within the community.

- (d) Bob Purser, an instructor in the art department at Bellevue Community College, described the need for studio space for artists and expressed support for the Ashwood cultural arts center proposal.

3. Study Session

(a) Council New Initiatives

Councilmember Lee attended a National League of Cities' public safety and crime prevention committee meeting. The committee discussed the Anti-Terrorism Act of 2001, which passed the House Judiciary Committee and is now under consideration by the Senate. He said the committee supports the legislation in general but feels there should be more emphasis on providing adequate resources for local law enforcement, the first responders in emergency situations. Mr. Lee proposed that City staff review this legislation in terms of Bellevue's needs. He said the bill is moving quickly through Congress with little input from local law enforcement representatives.

Mayor Mosher asked City Manager Steve Sarkozy to review the legislation. Mr. Lee suggested sending a letter of Bellevue's position to appropriate Congressional representatives.

Mr. Lee spoke to the need to implement 911 caller identification technology for incoming cellular phone calls. Mayor Mosher asked Mr. Sarkozy to look into the feasibility of this technology.

- (b) Ordinance No. 5322 denying the appeal of a Conditional Use Permit, with conditions, on the Application of Dan Vradenburg, Chair of the Board of Trustees of Open Window School, Application No. 99-224242-LB, for a school to be located at 6128 168th Place SE in the City of Bellevue, and granting the Conditional Use Permit with additional conditions.

Mr. Lee excused himself from participating in the discussion and vote of proposed Ordinance No. 5322, which denies the appeal of a Conditional Use Permit, with conditions, on the application of Dan Vradenburg (Open Window School) and grants the Conditional Use Permit with additional conditions.

Mayor Mosher asked remaining Councilmembers to disclose all communications regarding Open Window School.

Dr. Davidson said he received many emails about Open Window School that were addressed to the entire Council and copied to the City Clerk, but he did not read any of the emails. He has had no other communications whether oral, written, voicemail, or electronic regarding Open Window School.

Mr. Creighton said prior to Council's approval of the conditional use permit on March 19, 2001, he received emails about Open Window School that were addressed to the entire Council. He did not read any of the emails because the matter was considered quasi-judicial at that time. He

received an email from Mr. Herbig, which was also sent to Councilmember Noble, but he did not open or read the email.

After March 19, Mr. Creighton received a number of emails thanking him for his vote, which he read and deleted. None of these emails contained any substantive information or discussion about the merits of the appeal. Mr. Creighton said he does not recall any other communications whether oral, written, voicemail, or electronic regarding Open Window School.

Mr. Noble said prior to February 12, 2001, he received numerous emails from people on both sides of the issue, most of which were addressed to the entire Council and also received by the City Clerk. Mr. Noble said he read only one message which was from David Herbig, a longtime acquaintance. He turned the message over to the City Clerk and it is a matter of public record. Mr. Noble said the substance of the email was that Mr. Herbig's child had attended Open Window School for six years, it was an amazing place that offered specialized education for gifted children, it is better than the present program offered by Bellevue School District, the school is a good corporate citizen with dedicated parental support, the school's parents will do anything for the school including working with its neighbors, the current school goes only to fifth grade but the new school will go through eighth grade, and the school has passed all building requirements. Mr. Noble said Mr. Herbig urged him to reconsider and offered to provide additional information about the school. Mr. Noble did not respond to the email.

Mr. Noble said he also had one oral communication with another acquaintance, Troy Roper, prior to the February 12 Council meeting. Before anything of substance was discussed, Mr. Noble told Mr. Roper that he could not discuss the matter and the conversation was terminated.

Mr. Noble said he had no further ex parte contacts regarding the Open Window School matter after February 12 and up to March 19, other than emails sent to the entire Council and City Clerk. He did not read any of the emails.

After the March 19 Council vote on the ordinance approving the conditional use permit, Mr. Noble received a number of emails, some of which he read. Those he read only contained thank-you's or words to that effect and none contained anything substantive on the matter. Mr. Noble said he received an email within the past week on the subject, which he deleted without reading.

Mr. Degginger said he received numerous emails from people on both sides of the issue, most of which were addressed to the entire Council, prior to February 12, 2001. He did not read them and forwarded them to the City Clerk. In approximately July 2000, Mr. Degginger received a voicemail message from Mark Gregoire inviting him to tour the area but he did not return the call. Mr. Degginger attended part of a presentation about the proposed Open Window School at Cougar Ridge Elementary School in May 2000 because he happened to be at the school on unrelated business.

After February 12, Mr. Degginger received, but did not read, many emails addressed to the Council. He received several emails addressed to him specifically, which he opened because the titles did not indicate they were about Open Window School. When he encountered such messages, he closed them and forwarded them to the City Clerk. Mr. Degginger did not recall reading anything of substance about the application.

After February 12 and until Council's vote on the ordinance approving the conditional use permit on March 19, 2001, Mr. Degginger received no further emails and had no ex parte communications on the issue. A few weeks after March 19 and shortly before the residents filed their appeal, Mr. Gregoire stopped by Mr. Degginger's home unannounced on a Saturday morning and left a packet of materials about traffic on Cougar Mountain Way. Mr. Degginger invited Mr. Gregoire in and they discussed some of the documents in the packet. Mr. Degginger said he does not recall what Mr. Gregoire said about the documents that day. He did not read the packet, set it aside, and has not read it to date, primarily because he considered the matter to be concluded by that time. Mr. Degginger recalled thinking at the time that nothing Mr. Gregoire said about the material in the packet was significantly different from what he learned from the record or reviewed on the appeal.

Mr. Degginger received an email approximately four weeks ago from Jim Adcock about Open Window School. He did not read it and forwarded it to the City Clerk.

Deputy Mayor Marshall said she received many emails addressed to the entire Council prior to February 12, 2001. She did not read any of the emails received after the appeal to City Council was filed. She acknowledged that she opened some of them, but as soon as she realized the subject matter she closed the emails and forwarded them to the City Clerk's Office. She did not recall reading anything of substance about the appeal in any of the emails.

Prior to the appeal of the Hearing Examiner's decision by the Cougar Mountain Residents Association, Mrs. Marshall met with residents and toured the area. Residents discussed a variety of issues including traffic and the proposed Open Window School. Mrs. Marshall formed no opinions at that time about the school's application for a conditional use permit. She was later contacted by residents association members about their proposed appeal and agreed to meet with them again. After talking to the City Clerk and realizing the matter was quasi-judicial, Mrs. Marshall canceled the meeting.

During the months prior to the first Council hearing on the issue in October 2000, Mrs. Marshall was contacted by a representative of Open Window School. At that time, she repeated her suggestion that the school contact Metro about possible solutions to the traffic issues that appeared to be of concern to residents. She hoped the parties would be able to work out any differences regarding traffic. Mrs. Marshall said she had not at any time prior to the hearing of February 5, 2001, made up her mind on the issue relating to the application. She understood she was expected to keep an open mind and to decide the appeal based on the record before the Council, which she ultimately did.

After Council voted in March 2001 to grant the permit, Mrs. Marshall said she ran into Mr. Vradenburg, a friend, at Newport Heights Elementary School and they hugged. She told him she assumed he would be a good neighbor as he and other school representatives have promised. He said he would and they did not discuss the matter any further. Several weeks later, shortly before the residents appealed Council's decision to Superior Court, Mark Gregoire dropped by Mrs. Marshall's home unannounced and left a packet of material which he described as being about traffic on Cougar Mountain Way. They did not discuss the contents and since the City Attorney

already had a packet of the material from Mr. Degginger, Mrs. Marshall forwarded the packet to City staff without ever having read it.

Mrs. Marshall noted that several doctors contacted her husband at Overlake Hospital, where he works. Her husband told the doctors the matter was quasi-judicial and that he could not discuss their conversations with Mrs. Marshall, which he did not. Mrs. Marshall said she has had no other communications whether oral, written, voicemail, or electronic regarding Open Window School.

Mayor Mosher received many emails about the matter, most of which were addressed to the entire Council. He deleted most messages with "Open Window School" in the subject line without opening them. Some were forwarded to the City Clerk. He opened some messages that appeared to be about Open Window School. He closed these messages immediately and forwarded them to the City Clerk. Mr. Mosher said he did not recall reading any information in the emails about the substance or merits of the appeal. Some urged him to vote for the school and some urged him to vote against the school. Mayor Mosher received some emails addressed only to him. Those with titles referencing Open Window School were forwarded directly to the City Clerk, and others were closed and forwarded once he realized they were about the school. Mayor Mosher said he had no other oral, written, voicemail, or electronic communications regarding the Open Window School conditional use permit application.

Mayor Mosher asked whether anyone in the audience would like to question Councilmembers regarding their disclosures or offer rebuttal. No one came forward to comment.

- ➡ Dr. Davidson moved to adopt Ordinance No. 5322, denying the appeal of a Conditional Use Permit, with conditions, on the application of Dan Vradenburg, Chair of the Board of Trustees of Open Window School, Application No. 99-224242-LB, and granting the Conditional Use Permit with additional conditions. Mr. Creighton seconded the motion.

Mr. Degginger said he will support the motion. He is disappointed that it was necessary for Council to consider this issue several times because it has been difficult for the applicant, the community, and the neighborhood. He commented on Council's responsibility to consider the issue as a land use decision. He continues to be concerned about the traffic impacts associated with the project but he is ready to move forward. Mr. Degginger said it is important for the City, the school, and the neighborhood to work together now.

- ➡ The motion to adopt Ordinance No. 5322 carried by a vote of 6-0, with Mr. Lee absent from the room.

City Attorney Dick Andrews reminded everyone that the matter remains quasi-judicial until the conclusion of the next Council meeting on October 15.

At 6:39 p.m., Councilmember Lee returned to the meeting.

- (c) Resolution No. 6599 authorizing execution of an agreement with McNaul, Ebel, Nawrot, Halgren & Vance for professional services for legal representation of

Officer Hetle in the matter of the Coroner's Inquest into the death of Nelson Martinez Mendez.

Mr. Sarkozy requested Council consideration of Resolution No. 6599, which authorizes the execution of an agreement with McNaul, Ebel, Nawrot, Halgren & Vance for professional services for the legal representation of Officer Hetle in the matter of the Coroner's Inquest into the death of Nelson Martinez Mendez.

Councilmember Noble said his law firm has a professional relationship with McNaul, Ebel, Nawrot, Halgren & Vance and therefore he will not be participating in the discussion and vote on this issue.

➡ Mr. Lee moved to approve Resolution No. 6599, and Dr. Davidson seconded the motion.

In response to Mayor Mosher, Mr. Sarkozy said a Coroner's Inquest is a specialized legal process that requires outside legal counsel.

In response to Mr. Degginger, Mr. Sarkozy confirmed that the union contract with the Police Guild requires the City to provide legal representation for its members in inquest proceedings.

➡ The motion to approve Resolution No. 6599 carried by a vote of 6-0, with Mr. Noble not voting.

- (d) Resolution No. 6600 authorizing execution of an agreement with Stafford, Fry and Cooper for professional services for legal representation of the City in the matter of the Coroner's Inquest into the death of Nelson Martinez Mendez.

Mr. Sarkozy said the agreement established by Resolution No. 6600 authorizes expenditures up to \$75,000 for legal representation of the City in the matter of the Coroner's Inquest into the death of Nelson Martinez Mendez.

➡ Mrs. Marshall moved to approve Resolution No. 6600, and Mr. Creighton seconded the motion.

➡ The motion to approve Resolution No. 6600 carried by a vote of 7-0.

- (e) Recommendation of the Downtown Implementation Plan Citizen Advisory Committee regarding future use of the Ashwood Site

Planning and Community Development Director Matt Terry said development of the Ashwood site was first considered by the City Council in 1993 and a master plan was prepared but never implemented. He reviewed the major elements of a proposal by Su Development to build a two- or three-story, 30,000 square foot cultural arts center containing a theater, classrooms for arts organizations, public meeting and gallery space, and outdoor open space. Parking would be provided for the facility and the neighboring library.

Mr. Terry said the Su proposal is conceptual at this point and provides a general financial framework. The City-owned Ashwood site is currently valued at approximately \$13 million. In addition to contributing the land, Mr. Su's proposal contemplates additional public funding of \$1.25 million for the center, \$600,000 from the City for landscaping along the street frontage, and the City's obligation to develop a park on the site. Mr. Su has proposed a transaction between the City and Su Development in which he would buy City-owned property located at NE 10th Street and 108th Avenue NE. He would then use the floor area ratio (FAR) associated with the site toward development of an adjacent apartment building and donate the property back to the City for a park. Mr. Su proposes that underground parking also be developed on the site. He proposes a partnership with Bellevue Regional Library and Bellevue Community College as well as grants and private fund-raising.

Mr. Terry recalled Mr. Su's presentation to Council on April 2, 2001, and the recent work of a Charrette Group to discuss options for the 2.5-acre Ashwood site. Planning Director Dan Stroh said the site currently contains surface parking and a grass field. He described the following alternatives reviewed by the Charrette Group:

- 1993 Ashwood Park Master Plan – Community center and children's theater, affordable housing, open space.
- Su Proposal.
- Cultural/Urban Concept – Large cultural/heritage center on north end of site connected to possible future library expansion, as well as residential units.
- Small Performing Arts Concept – Small cultural/heritage center on north end of site, plaza and amphitheater in the middle.
- Community Center Concept – Community center on north end of site, recreation court in the middle, and playfield on the south end.
- Active Recreation Concept – Basketball and tennis courts, plaza, skate park.
- Passive Recreation Concept – Open field, formal garden, water feature, trails, plaza.

Mr. Terry said the Downtown Implementation Plan Citizen Advisory Committee (CAC) discussed the options but did not have the overall parks and recreation assessment that needs to be completed as part of the Downtown Implementation Plan process. The CAC's general recommendation is that the site should remain mostly open. If buildings are developed on the site, the CAC feels there should be no loss of open space compared to the present site.

Lesley Stuart, Chair of the Parks and Community Services Board, noted the Board's letter dated July 12, 2001, in the Council packet. She said the 1993 Master Plan and the Charrette Group criteria match for almost every item. The Board recommends that City staff update the Master Plan and conduct a full parks and recreation needs assessment for the downtown area. Ms. Stuart asked that any further work on the site be brought before the Board for its review. She said the Board offers the following comments should Council wish to pursue the Su proposal:

- Negotiations with Su Development regarding development enhancements that can benefit its adjacent residential project should be conducted separately from the Ashwood land use issue and decision.

- Conduct a process for the Ashwood site that would identify all potential partners and evaluate proposals based on the best value to the community.

Ms. Stuart thanked the Downtown Implementation Plan CAC for its hard work and the City Council for considering the Park Board's recommendation.

Lynn Allison, Chair of Bellevue Arts Commission, said the Commission supports the CAC's recommendation to preserve open space on the Ashwood site and believes the site is well suited for cultural uses. The Commission identified five hallmarks that will signal Bellevue's success with the site:

- The arts are an essential part of community life.
- Art and artists of every kind.
- Ready access to a variety of arts venues with a concentrated cultural district in the downtown.
- Civic leaders who champion the arts.
- Widespread community support.

Ms. Allison said the community is in need of performing arts space of various sizes as well as office and classroom space for arts organizations. The Commission is eager to work with Council as it reviews and considers site alternatives.

Mr. Terry said staff recommends that Council: 1) separate the issue of FAR transfer from the future uses of the Ashwood site, 2) direct staff to conduct negotiations with Mr. Su regarding the value of the property and develop a business proposal for Council's consideration, 3) defer the question of future development of the Ashwood site to the Parks and Community Services Board for update of the Master Plan, and 4) consider the arts uses included in the Su Proposal, community center uses in the 1993 Master Plan, as well as additional concepts from all of the options. As part of the Master Plan update, staff will develop a specific financial plan in time for Council consideration during the next major update of the City's Capital Investment Program (CIP) Plan. Mr. Terry noted that staff agrees with preserving open space on the Ashwood site but feels the CAC's recommendation of maintaining 80 percent of the site as open space is too prescriptive. He said many of the alternatives, including the 1993 Master Plan and the Su proposal, could not be accomplished under the 80-percent open space guideline.

In response to Dr. Davidson, Mr. Terry said the City owns the parking area on the north side of the Ashwood site but not the library's parking lot. Dr. Davidson emphasized the importance of incorporating adequate parking, possibly underground, on the site.

In response to Mr. Degginger, Mr. Terry said his understanding of the Su proposal is that Mr. Su would apply the income stream from the King County Library District's commitment to pay for parking and from Bellevue Community College's lease of classroom space to secure a loan, and then use revenues from these two sources to repay the construction loan. Mr. Degginger noted that the Library District will not have funds to commit to this project until 2008, yet Mr. Su is interested in pursuing the project next year.

Responding to Mr. Degginger, Mr. Terry said the City's contributions under the Su proposal include the land, a cash contribution of \$1.25 million, development of street frontage along the site, and the planning and development of a park (over an underground parking structure).

In response to Mr. Lee, Mr. Terry said revenue from Mr. Su's proposed purchase of development rights for the City site at NE 10th Street and 108th Avenue NE could be used for any municipal purpose.

In response to Mr. Noble, Mr. Terry said the "green streets" concept is under consideration in the Downtown Implementation Plan update process as a way to connect areas of downtown. In further response, Mr. Terry said Bellevue Community College has expressed an interest in the cultural arts center concept. Two possible roles for BCC are to expand its art program and the operation and management of the facility.

Deputy Mayor Marshall thanked all of the parties involved in the review of alternatives for the Ashwood site. She supports the need for space for arts programs but feels there is a need to move beyond the conceptual level. Mrs. Marshall has received approximately 100 emails and letters of support for a cultural arts center. She expressed concern that many local arts groups may not be able to use it because of financial and space constraints. She is in favor of negotiations with Su Development regarding the transfer of FAR from the corner site but feels the negotiations should be conducted separately from discussions about the future use of the City-owned Ashwood site. Mrs. Marshall agrees with the recommendation to preserve open space on the Ashwood site but does not want to limit building development to only 20 percent of the site. She endorsed the need for a full parks and recreation assessment and encouraged the involvement of residents neighboring the site.

- ➡ Mrs. Marshall moved to direct staff to enter into negotiations with Su Development for the purchase of FAR on the City site at the corner of NE 10th Street and 108th Avenue NE, with the stipulation of reserving underground space for a future parking facility if needed. Dr. Davidson seconded the motion.

In response to Mr. Creighton, Mr. Terry explained that the transfer of development potential is based on FAR (floor area ratio). The Land Use Code allows a transfer to adjacent properties only and FAR cannot be transferred across a right-of-way. If a transfer of FAR is negotiated with Mr. Su, the resulting development potential could result in a four-story building that would still be subject to applicable building height limits.

Mr. Creighton serves as co-chair of the Downtown Implementation Plan CAC and participated in the charrette. He confirmed general support by the charrette group for retaining open space and providing some type of development related to the arts. He is in favor of proceeding with a thorough needs assessment for the site.

Dr. Davidson is in favor of initiating the site planning process through the Parks and Community Services Board. He suggested considering a combination of community center and arts center uses in one facility. He will support the motion.

Mr. Lee said he would like to know Mr. Su's overall proposal and whether the FAR transfer issue is a critical element. Mr. Terry advised that if Council supports Mrs. Marshall's motion, staff can then determine Mr. Su's position on the issue during negotiations.

Mr. Degginger expressed support for the motion and the need to develop consensus within the community and Council about development of the Ashwood site. He noted that the City is taking most of the risk under the Su proposal.

Mr. Noble noted that the CAC has not endorsed the Su proposal. He feels the proposal contains some desirable elements but that many details still need to be fully developed.

- ➡ The motion to direct staff to enter into negotiations with Su Development for the purchase of FAR on the City site at the corner of NE 10th Street and 108th Avenue NE, with the stipulation of reserving underground space for a future parking facility if needed, carried by a vote of 7-0.

Mayor Mosher feels it is important to know where a possible performing arts center and new downtown fire station might be located prior to making a final decision on the Ashwood site. He is in favor of moving forward with a needs assessment.

- ➡ Mrs. Marshall moved to affirm the general direction of the 1993 Ashwood Site Master Plan and to refer the Master Plan to the Parks and Community Services Board for its review and refinement, based on the needs assessment for parks and recreation services being done as part of the Downtown planning process. Mr. Noble seconded the motion.

Dr. Davidson cautioned that some aspects of the Master Plan are outdated and no longer relevant.

- ➡ As a substitute motion, Mr. Degginger moved to: 1) refer the planning of the Ashwood site to the Parks and Community Services Board, 2) direct the Board to place all options on the table for consideration, and 3) direct staff to refine the program and financial plan in time for Council consideration during the next major update of the Capital Investment Program (CIP) Plan. Mr. Creighton seconded the motion.

Mr. Lee offered a substitute motion to direct staff to undertake additional evaluation and due diligence work on the Su proposal, but the motion was not seconded.

In response to Dr. Davidson, Mr. Degginger clarified that the intent of his motion is to ask the Parks Board to review a broad array of options beyond the Master Plan and Su proposal. In response to Mr. Lee, Mr. Terry said the work contained in the motion would be completed by early fall of 2002.

- ➡ The substitute motion to: 1) refer the planning of the Ashwood site to the Parks and Community Services Board, 2) direct the Board to place all options on the table for consideration, and 3) direct staff to conduct a needs assessment and refine the program and financial plan in time for Council consideration during the next major update of the Capital Investment Program (CIP) Plan, carried by a vote of 6-1, with Mr. Lee dissenting.

Due to approval of the substitute motion, the main motion was abandoned.

At 7:58 p.m., Mayor Mosher declared a short break. The meeting resumed at 8:10 p.m.

(f) Telecommunications Policy Discussion

(1) Telecommunications Interest Statement – Section 1

City Manager Steve Sarkozy said the purpose of this discussion is to seek Council feedback on the Telecommunications Interest Statement and to determine whether it contains an appropriate balance between encouraging telecommunications deployment and regulating how it is deployed. Specific issues include Council's priority that Bellevue become a wired city, protecting aesthetic aspects, and underground placement of utilities.

Transportation Director Goran Sparrman said the purpose of the Telecommunications Interest Statement is to support Council's goal of a Smart City/Wired City, provide a basis for reviewing policies and practices, and guide negotiations and initiatives. He noted that tonight Section I will be discussed, followed by discussions of Sections II and III in the near future. Mayor Mosher suggested including a definition of telecommunications in the interest statement.

Mr. Degginger suggested adding the following statements:

- A smart city establishes clear requirements for the installation of telecommunications equipment and applies these requirements consistently.
- A smart city attempts to equitably distribute the burden associated with siting telecommunications facilities.

Mr. Degginger noted that many citizens want access to bandwidth and cellular communication, yet most do not want the equipment in their neighborhood. Mr. Sparrman agreed that this is an important issue. In response to Mr. Degginger, Mr. Sparrman said staff recognizes the need to review policies, procedures, and practices on an ongoing basis. Staff is currently conducting a review of telecommunications policies created in 1997.

Deputy Mayor Marshall would prefer co-locating telecommunications facilities in certain areas and screening them as much as possible rather than dispersing them throughout the entire community. She is in favor of locating the equipment on City facilities in order to achieve the lease revenue.

Mayor Mosher questioned whether the term "encourage" refers to incentives for telecommunications providers. Mr. Noble is in favor of broader statements of interest instead of specific regulations. Mr. Creighton is interested in citizen input regarding the tradeoffs associated with providing telecommunications services.

Mr. Sparrman said staff will revise section I of the interest statement prior to the upcoming discussion of Section II.

(2) Western Integrated Networks (WIN) Competitive Cable TV Franchise

Mr. Sparrman said staff is requesting Council direction regarding the establishment of a franchise agreement with Western Integrated Networks (WIN). AT&T Broadband is a large cable television franchise serving approximately 39,000 customers in Bellevue. Millennium Digital Media is a small franchise granted in 1997 serving approximately 525 customers.

WIN is a start-up company with approximately \$800-900 million in capital that has applied for a cable television franchise in Bellevue. WIN provides fiber directly into homes rather than building a fiber network and then wiring coaxial cable into homes. Current franchises include Seattle (2001 – 2011), Austin, Houston, Dallas, San Antonio, Los Angeles, Sacramento, San Diego, and Portland.

Mr. Sparrman said the risks of granting WIN a franchise are: 1) disruption to the right-of-way during construction, 2) impacts of deployment, and 3) WIN may be unable to raise adequate capital to build a network in Bellevue. The benefits are: 1) enhanced competition, 2) fiber connection directly to homes, 3) new and innovative services to Bellevue residents, and 4) additional franchise fees, permit fees, and taxes as revenue to the City.

Mr. Sparrman said WIN proposes a franchise term of 15 years. Completion of the system could take up to five years and a technical upgrade of the system could be required by the City after the seventh year. As specified in the AT&T franchise agreement, WIN would be required to provide public, educational, and government access channels.

In response to Mrs. Marshall, Mr. Sparrman said WIN was reluctant to commit to completing specific percentages of the system on an annual basis. In response to Mrs. Marshall, Franchise Manager David Kerr said the franchise agreement includes a \$1.5 million performance bond for construction. In addition, there is a letter of credit for \$20,000 and a provision for liquidated damages of \$1,000 per day.

Mr. Degginger said he is not comfortable with a franchise agreement that does not contain specific benchmarks for completion and associated penalties for non-completion. In response to Mr. Degginger, Mr. Sparrman said WIN is the only company with a pending franchise application with Bellevue. Two other companies who submitted franchise applications have withdrawn.

In response to Mr. Noble, Mr. Kerr said WIN's franchise agreement with Seattle contains a phased, seven-year buildout schedule and a liquidated damages provision.

In response to Mrs. Marshall, Mr. Kerr explained that bonding requirements for WIN are different from those used for AT&T. A bond is very expensive for WIN so while Bellevue wants the security of a bond, they do not want to set the level so high and therefore discourage WIN's involvement.

In response to Mr. Creighton, Mr. Kerr said approximately 290 miles of AT&T's network is underground and 190 miles are aerial. In further response, Mr. Kerr said WIN is a bundled service provider that intends to provide television, Internet, and telephone services.

Mr. Creighton spoke in favor of facilitating a new cable television provider in Bellevue. He feels the risk to the City is minimal.

Mayor Mosher feels the introduction of a competitive provider would be good for consumers and provide an impetus for competitors to complete upgrades to their network.

Mr. Lee expressed concern that a provider could tear up City streets and then abandon a project. He also would like the agreement to include periodic performance goals and incentives for completing these goals. In response to Mr. Lee, Mr. Sparrman said 360 Networks recently completed all of the roadway repairs required of them.

Mr. Sparrman said staff will finalize negotiations and bring the franchise agreement back for Council review and action.

(3) Deployment of DSL Service

Planning and Community Development Director Matt Terry referred to the City's undergrounding policy (Comprehensive Plan Policy UT-39) on page 3-82 of the Council packet, which contemplates that the City will eventually underground all utilities:

“Require the undergrounding of all new electrical distribution and communications lines except that interim installation of new aerial facilities may be allowed if accompanied by a program to underground through coordination with the City and other utilities.”

The policy further states that: “Interim facilities should be limited to the aerial installation of a new line of ½” diameter or less.” Mr. Terry said both AT&T and WIN propose to utilize cable larger than ½” in diameter. He said staff's interpretation of the policy and the use of the word “should” implies that City has the discretion to allow larger cable, if desired.

Mr. Terry noted the City has no plans in the foreseeable future to rebuild residential streets, which would cause overhead lines to be placed underground. Therefore, visible lines and equipment are likely to be an ongoing fact of life in the community.

Mr. Terry recalled Council's interest in facilitating the deployment of DSL technology throughout the city. He said the City has received complaints that its regulations of wireless facilities are too rigid, particularly in residential areas. Staff anticipates that similar complaints will surface as DSL providers attempt to deploy their networks. Mr. Terry feels the City should handle the siting of wireless and DSL equipment in a consistent manner.

Mr. Terry said Qwest is providing overhead DSL cable on existing lines as well as associated ground-mounted equipment in the right-of-way. Qwest would like the option of placing ground-mounted equipment in residential zones, which is in direct conflict with the City's height limitations and residential setback requirements.

Mr. Terry displayed photos of current utilities equipment located in the public right-of-way. He presented the following options regarding undergrounding and DSL deployment:

1. Accept visual impacts of status quo rather than trying to force utilities underground.
2. Direct staff to examine, with Puget Sound Energy, a framework for undergrounding these services throughout residential neighborhoods.
3. Construct a conduit network through residential areas to be used by providers for a fee.

Mr. Terry said staff's recommendation regarding DSL deployment is that Council direct staff to pursue amendments to the Land Use Code to enhance options for locating telecommunications equipment in residential areas. He said providers cannot share equipment because they all operate with different technologies and serve different neighborhood nodes.

Mr. Terry summarized that if the WIN cable television franchise is granted, their lines will be aerial unless Council directs staff to pursue another option. He requested Council direction regarding Qwest's proposed deployment strategy.

Dr. Davidson questioned the feasibility of locating utilities equipment on park, school, and other public properties in residential areas. Mr. Terry confirmed that this is a viable option but noted there will still be visible impacts.

Mrs. Marshall acknowledged the high cost of a City-constructed conduit network throughout the community but suggested this could be an option for specific neighborhoods with a strong desire to place utilities underground. She suggested a partnership approach with neighborhoods utilizing Neighborhood Enhancement Program (NEP) or similar funds. She is not in favor of allowing the placement of utilities equipment on private property. Mrs. Marshall suggested the use of incentives to encourage utilities providers to co-locate equipment.

In response to Mr. Creighton, Mr. Terry said wireless technology is growing but it is not expected to replace cable-based technology for at least 10 years. Chief Information Officer Toni Cramer explained that telecommunications technology is changing rapidly. However, successful implementation has been hampered by a number of barriers including the fact that the federal government has not allocated adequate air waves to facilitate the deployment of wireless technologies. Ms. Cramer said locating equipment within schools and parks might not work for all existing technologies. She described a new web mesh technology utilizing small antennas that is emerging in some areas of the country.

Mr. Lee is in favor of exploring wireless technologies and evaluating the cost of undergrounding utilities.

Mr. Noble is not in favor of making exceptions in City policy for wireless antennas and supports the need to provide screening of equipment in public rights-of-way.

Mayor Mosher feels it is not necessary or financially feasible to actively underground all utilities. He is not in favor of amending the Land Use Code to allow telecommunications equipment in residential areas.

After additional brief comments by Councilmembers, Mr. Mosher noted Council consensus to direct staff to: 1) identify City-owned properties for the potential placement of

telecommunications equipment, and 2) explore options in which equipment could be located on private property within close proximity to the right-of-way. Dr. Davidson would like the City to discuss options with Bellevue School District as well.

- ➡ Mrs. Marshall moved to extend the meeting to 10:30 p.m., and Mr. Degginger seconded the motion.
- ➡ The motion to extend the meeting to 10:30 p.m. carried by a vote of 7-0.

Mr. Lee suggested an approach in which providers could negotiate with City staff if they need an exception in locating telecommunications equipment.

- ➡ Mr. Creighton moved to continue the City's current policy of placing telecommunications equipment in the public right-of-way only and to not explore options for placing such equipment in residential areas, and Mrs. Marshall seconded the motion.

Mr. Creighton encouraged continued protection of Bellevue neighborhoods and enhanced efforts to work with providers to resolve right-of-way needs.

- ➡ The motion to continue the City's current policy of placing telecommunications equipment in the public right-of-way only and to not explore options for placing such equipment in residential areas carried by a vote of 7-0.

(g) 2002 Comprehensive Plan Update – Proposed Approach

Planning Director Dan Stroh recalled the state mandate to update the Comprehensive Plan by September 2002. Senior Planner Kathleen Burgess said staff is seeking Council direction on how to proceed with this update process. The City is required to take action every five years to review its Comprehensive Plan and development regulations in comparison to Growth Management Act requirements. Staff proposes a two-phase approach for the upcoming update:

- 2002 – Meet state requirements and some local priorities, based on current population and employment targets.
- 2003/2004 – Address new population and employment targets, transit-oriented development, and neighborhood character.

Ms. Burgess said local priorities to be addressed for the 2002 update include the local transportation vision, mode split goals, Parks and Open Space Plan, and pipeline and other utility issues. A major part of the update is a public participation program involving citizen committees, public hearings and meetings by the Planning Commission, and City Council briefings and adoption. Staff requested Council's approval of the two-phase approach and public participation program.

- ➡ Mr. Degginger moved to direct staff to proceed with the two-phase approach and public participation program, and Mr. Lee seconded the motion.

Mr. Creighton expressed concern that mode split goals will be interpreted as something more than goals, which could then affect future transportation planning if goals are not met.

Mrs. Marshall expressed support for the motion. She is not in favor of accepting more housing and employment goals until the State improves capacity on the regional freeway system.

- ➡ The motion to direct staff to proceed with the two-phase approach and public participation program carried by a vote of 7-0.

(h) Critical Areas and Shoreline Update

Senior Planner Kevin McDonald said the Shorelines Hearings Board recently invalidated Shoreline Master Program guidelines adopted in November 2000 by the Department of Ecology. He requested Council direction regarding how to proceed with the development of Bellevue's shoreline program.

- ➡ Mrs. Marshall moved to proceed with the Critical Areas update, to conduct shoreline inventory work, and to defer policy and regulatory work on the Shoreline Master Program until new state guidelines are available. Mr. Degginger seconded the motion.
- ➡ The motion to proceed with the Critical Areas update, to conduct shoreline inventory work, and to defer policy and regulatory work on the Shoreline Master Program until new state guidelines are available carried by a vote of 7-0.

At 10:19 p.m., Mayor Mosher declared the meeting adjourned.

Myrna L. Basich
City Clerk

kaw